

REMARKS

Claims 48-55 are pending in this application. Claims 48-55 are rejected under 35 U.S.C. § 102(e) for anticipation by Sanberg (U.S. Patent Application Publication No. 2002/002851; hereafter “Sanberg”) as evidenced by Rosu-Myles et al. (*Stem Cells* 18:374-381 (2000); hereafter “Rosu-Myles”). By this reply, Applicants amend claims 48-50, 52, and 55, add new claims 56-68, and address the present rejection.

Support for the Amendment

Support for the amendment to claims 48 and for new claims 56-57 is found on, e.g., page 5, line 18, page 6, line 21, and page 6, line 25, of the specification as filed. Support for new claims 58-68 is found in present claims 49-55 and, e.g., page 6, line 25, and page 7, line 1, of the specification as filed. Claims 49, 50, 52, and 55 are amended for consistency between the claims. No new matter is added by the amendment.

Rejection under 35 U.S.C. § 102(e)

Claims 48-55 stand rejected under 35 U.S.C. § 102(e) for anticipation by Sanberg, as evidenced by Rosu-Myles. The Office states that “Sanberg teaches the use of a mononuclear cell fraction isolated from umbilical cord blood and Rosu-Myles et al. provide evidence showing that this cell fraction does contain Lin- cells” (Office Action, p. 4). Applicants have amended present independent claim 48 to recite the administration of a substantially pure population of human CD34+/-, Lin- cells. Sanberg, either alone or in combination with Rosu-Myles, fails to teach or suggest the treatment of stroke by administering a substantially pure population of CD34+/-, Lin-

cells, as is recited by present claims 48-68.

The positive and negative cell selection methods described in the present specification (and in particular in Example 5 of the '567 patent, which is incorporated by reference into the present specification) result in the preparation of a substantially pure population of CD34+/-, Lin- cells. A skilled artisan, as of the filing date of the present application, would recognize that positive and negative cell selection methods yield a population of cells in which at least 95% of the cells in the population are target cells; the resulting population of cells would be considered substantially pure as to the target cells. As evidence of this common knowledge in the art, Applicants submit Safarik et al. (*J. Chromatography B* 722:33-53 (1999); hereafter "Safarik"; Exhibit A), which states that "[b]oth negative and positive selection of cells is used in IMS [immunomagnetic separation]. 95%-99% viability and purity of the positively isolated cells are typically achieved..." (Safarik, p. 43, ¶1).

As has been discussed previously (see Reply to Final Office Action dated October 30, 2007), Sanberg fails to teach or suggest the use of a substantially pure CD34+/-, Lin- cell population to treat stroke, as is recited in present claims 48-68. Sanberg merely discloses the use of a cell composition that includes all mononuclear cells from UCB, including, e.g., lineage positive cells, as well as the use of a cell composition that lacks CD34+ cells, which are present in Applicants' recited cell population. Thus, Sanberg fails to teach or suggest all of the limitations of present claims 48-68.

Rosu-Myles, fails to remedy the deficiencies of Sanberg because it also fails to teach or suggest the use of a substantially pure population of CD34+/-, Lin- cells for treating stroke. Thus, the combination of Sanberg and Rosu-Myles fails to support the inherent anticipation of

present claims 48-68.

For all of the reasons given above, Applicants respectfully submit that the rejection of claims 48-55 under 35 U.S.C. § 102(e) for anticipation by Sanberg in light of Rosu-Myles should be withdrawn and should not be applied to new claims 56-68.

CONCLUSION

Applicants submit that present claims 48-68 are in condition for allowance, and such action is respectfully requested.

Also submitted is a Request for Continued Examination and a Petition to extend the period for replying for three months, to and including August 28, 2008. Applicants authorize the debit of the fees required by 37 C.F.R. § 1.17(a) and 1.17(e) from Deposit Account No. 03-2095.

If there are any other charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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For Paul T. Clark
Reg. No. 30,162

TODD ARMSTRONG, Ph.D.
Reg. No. 54,590

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045